

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

§ MDL-1446

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**Michael N. Milby, Clerk of Court**

Plaintiff Abbey National and certain defendants<sup>1</sup> in the action entitled Abbey National Treasury Services plc v. Credit Suisse First Boston Corp., et al., Civil Action No. H-03-1241 (hereinafter referred to as “Abbey”), join in asking this Court to clarify that this Court’s July 11, 2003 Scheduling Order shall govern the filing of responsive pleadings in Abbey. The moving parties’ joint motion is prompted by the Court’s Order dated October 8, 2003. That Order would place Abbey on a schedule different from the one contemplated in the Court’s July 11, 2003 Scheduling Order. As explained more fully in the paragraphs that follow, the moving parties believe that the Court did not intend for this result to obtain, especially in light of the unified schedule now in place with respect to all of the similarly situated consolidated, related, and coordinated cases. Movants have attached a Proposed Order that would clarify that defendants’ responsive pleadings in Abbey shall be filed in accordance with the Court’s July 11, 2003 Scheduling Order.

In support of their Motion, the moving parties state as follows:

#### **Summary of the Request**

1. On October 8, 2003, this Court entered an Order (docket entry no. 1733) directing any defendant who has not filed a responsive pleading in Abbey to do so by November 10, 2003.

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<sup>1</sup> Movants here include Plaintiff Abbey National Treasury Services plc (“Abbey National”), and defendants Credit Suisse First Boston Corporation, Credit Suisse First Boston, Credit Suisse First Boston (USA), Inc., Credit Suisse First Boston, Inc., Credit Suisse Group, Credit Suisse First Boston (Europe) Limited, J.P. Morgan Chase & Co., J.P. Morgan Securities Inc. (formerly known as Chase Securities Inc.), J.P. Morgan Securities Holding Inc., J.P. Morgan Investment Corp. (now known as J.P. Morgan SBIC LLC), J.P. Morgan Securities Limited, Bank of America Corporation, Banc of America Securities LLC, Banc of America Securities Limited, Canadian Imperial Bank of Commerce, CIBC Inc., CIBC World Markets Corp., CIBC World Markets plc, Dresdner Kleinwort Wasserstein, Inc., Dresdner Kleinwort Wasserstein Securities LLC, Dresdner Kleinwort Wasserstein Services LLC, Dresdner Bank AG, Dresdner Bank AG London Branch, Deutsche Bank AG, Deutsche Bank AG London, Deutsche Banc Alex. Brown Inc., ABN AMRO Incorporated, successor to named defendant ABN AMRO Securities (USA) Inc., and ABN AMRO Bank N.V. (“the Financial Institution Defendants”).

Except as otherwise provided in stipulations or agreements entered by certain of the parties, the Financial Institution Defendants join in this motion without waiver of, and subject to, any defense that they might have based on lack of personal jurisdiction and/or insufficiency of service of process.

That Order has the effect of accelerating Abbey—removing Abbey from the consolidated scheduling framework established in the Court’s Scheduling Order entered on July 11, 2003 (docket entry no. 1561), and placing it on a schedule ahead of other similar cases now consolidated before this Court. As explained in this Motion, the moving parties surmise that the Court may have entered its October 8, 2003 Order due to the somewhat complex procedural history of this action, and because of a misunderstanding arising from a stipulation recently brought to the Court’s attention by plaintiff Abbey National’s counsel.

2. The moving parties join in asking the Court to clarify that the defendants’ response date in Abbey is subject to the Court’s July 11, 2003 Scheduling Order, and to enter the attached Proposed Order aligning defendants’ response dates in Abbey with the Coordinated Response Dates established in the July 11, 2003 Scheduling Order.

### **Detailed Background**

3. In 2002, plaintiff Abbey National and plaintiffs Internationale Kapitalanlagegesellschaft mbH, HSBC Trinkaus Luxembourg Investment Managers SA, and HSBC Trinkaus & Burkhardt KGaA, individually and on behalf of others (the “HSBC Trinkaus Plaintiffs”), each filed two substantially similar actions in the United States District Court for the Southern District of New York.<sup>2</sup>

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<sup>2</sup> Abbey National and the HSBC Trinkaus Plaintiffs each filed actions in both the Southern District of New York and the Southern District of Texas because of the uncertainty that personal jurisdiction could be obtained against all of the defendants in a single venue. Both the New York and Texas complaints for Abbey National and the HSBC Trinkaus Plaintiffs track each other in all material respects. The two actions filed in the United States District Court for the Southern District of New York were transferred to the Southern District of Texas by Order of the Judicial Panel on Multidistrict Litigation for coordinated and consolidated pretrial proceedings with all other Enron-related cases pending in this District.

4. Earlier this year, the Court consolidated a number of cases with the Newby action to ensure the prompt and efficient adjudication of Enron-related securities litigation. The consolidated cases include the present case, Civil Action H-03-1241 (the Abbey action transferred to the Southern District of Texas from the Southern District of New York) and its substantially identical counterpart, Civil Action H-02-3869 (originally filed in the Southern District of Texas), and the two actions brought by the HSBC Trinkaus Plaintiffs (the “INKA actions”), Civil Action No. H-03-1248 (transferred to the Southern District of Texas from the Southern District of New York) and H-02-4080 (filed in the Southern District of Texas).

5. In the months leading up to the consolidation of the two Abbey and the two INKA actions, plaintiffs and many of the defendants entered into stipulations providing that defendants need not respond to the complaints until this Court entered a scheduling order setting response dates (assuming consolidation of the cases).

6. Among the parties that entered into such stipulations in the two Abbey and two INKA actions were certain foreign Financial Institution Defendants, including Banc of America Securities Limited. These foreign Financial Institution Defendants entered into the stipulations because of the uncertainties associated with the service of process overseas and the attendant uncertainties as to when responsive pleadings might be due. As part of these stipulations, certain of the foreign Financial Institution Defendants, including Banc of America Securities Limited, waived insufficiency of service of process. At the time of these stipulations, the Abbey and INKA actions had not been consolidated with Newby and thus were not subject to the then-controlling scheduling order in Newby.

7. When the two Abbey and the two INKA cases were consolidated with Newby earlier this year, it was the movants’ understanding (and the intent of the parties in entering the

prior stipulations) that the defendants' time to respond to the complaints in the Abbey and INKA cases would be governed by the applicable scheduling orders issued by this Court in Newby.

8. Thereafter, on July 11, 2003 this Court entered its scheduling order (the "July 11 Scheduling Order"), which governs, among other things, the defendants' time to respond to the complaints in the consolidated, related, and coordinated cases not currently proceeding under the controlling Newby and Tittle consolidated complaints, including the two Abbey actions and the two INKA actions.

9. The July 11 Scheduling Order provides that the consolidated, related and coordinated cases are "stayed as to the filing of amended pleadings and/or responsive pleadings until the motions for class certification in Newby and Tittle are resolved by the Court . . ."

10. The July 11 Scheduling Order also provides that, with respect to all consolidated, related, and coordinated cases, the plaintiffs in those cases will have the opportunity after the Court resolves the class certification motions to (1) elect whether to dismiss their complaints and proceed under the complaint in Newby or Tittle or both, or (2) proceed under their own complaints or request leave to amend them. July 11 Scheduling Order, at ¶ I. Defendants are required to file responsive papers within 30 days after plaintiffs make this election. Id.

11. Accordingly, plaintiffs and the Financial Institution Defendants have assumed that the four cases, as consolidated actions, are stayed pending rulings on class certification in Newby and Tittle, after which time (1) the plaintiffs in the two Abbey and two INKA actions will decide whether to proceed under Newby or stand on their current complaints or amend them, and (2) if necessary, the Financial Institution Defendants will file responses pursuant to the mandates of the July 11 Scheduling Order.

12. In September 2003, counsel for plaintiff Abbey National noticed that one of the stipulations, entered between Abbey National and Banc of America Securities Limited months earlier, had been filed but had not been signed by the Court. Accordingly, counsel for Abbey National resubmitted the stipulation to the Court for signature as a housekeeping measure. It was not the intent of counsel for Abbey National, by resubmitting the stipulation, to seek modification of the pleading schedule set by the Court in its July 11 Scheduling Order.

13. In response to this re-submission of the stipulation between Abbey National and Banc of America Securities Limited, on October 8, 2003, this Court entered an Order holding that any defendant that has not yet filed a pleading in response to the complaint in this action, H-03-1241, shall do so by November 10, 2003.

14. The result of the Court's Order (a result that the moving parties believe the Court did not intend) is that Abbey, Civil Action No. H-03-1241, is now on a different schedule than that of its counterpart action, Civil Action No. H-02-3869, the two INKA actions, Civil Action Nos. H-03-1248 and H-02-4080, and the vast majority of the other consolidated, related and coordinated actions.

15. As in the vast majority of the other consolidated, related, and coordinated cases, no defendant has yet responded to the Abbey complaint. Under the October 8, 2003 Order, all defendants would be required to file a response to the complaint within the next two weeks.

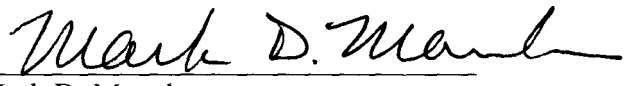
16. The Court's October 8, 2003 Order appears to be inconsistent with the intent of the Court's July 11 Scheduling Order. In addition, the July 11 Scheduling Order contemplates that after class certification issues are resolved, the plaintiff in Abbey may seek to amend its complaint or drop its complaint altogether and proceed under the Newby amended complaint.

Under the October 8 Order, plaintiff Abbey National apparently loses this option. If not, there is little to gain from requiring defendants here to answer a complaint that shortly thereafter may be amended or dropped altogether.

**Conclusion**

WHEREFORE, for all of the foregoing reasons, the moving parties urge the Court to enter the attached Order holding that the date by which defendants must respond to plaintiff Abbey National's complaint in this action shall be the time set by the Court in paragraph I (page 3) of the July 11, 2003 Scheduling Order.

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### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Agreed Motion to Align Response Date to Complaint with Coordinated Response Dates in July 11, 2003 Scheduling Order, and the proposed Order, have been served upon all known counsel of record by serving a copy by electronic mail to serve@esl3624.com in accordance with the Order dated August 7, 2002 (Docket No. 984) on this the 23rd day of October, 2003.

A handwritten signature in black ink, appearing to read "Mark D. Manela", is written over a horizontal line.

Mark D. Manela